STATE OF MICHIGAN

COURT OF APPEALS

ORALIA SANCHEZ and RICARDO SANCHEZ, Plaintiffs-Appellants, v MEIJER, INC., Defendant-Appellee.	UNPUBLISHED March 17, 2015 No. 319867 Wayne Circuit Court LC No. 12-009293-NO

Before: DONOFRIO, P.J., and RIORDAN and GADOLA, JJ.

PER CURIAM.

Plaintiffs, Oralia Sanchez (Oralia) and Ricardo Sanchez (Ricardo), appeal as of right the trial court order granting summary disposition in favor of defendant, Meijer, Inc. This case arises out of an incident where Oralia slipped and fell on a puddle of water when she was an invitee to defendant store. We affirm.

I. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

We review *de novo* a motion for summary disposition under MCR 2.116(C)(10). *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). The motion "tests the factual support for a claim and should be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

B. ANALYSIS

"In a premises liability action, a plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages." *Benton v Dart Properties, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006). A duty arises to an invitee when the defendant has actual or constructive notice of the condition. *Banks v Exxon Mobil Corp*, 477 Mich 983, 983; 725 NW2d 455 (2007). Thus, a storekeeper has the duty to provide reasonably safe aisles for customers, and will be liable for injuries caused by unsafe conditions,

if: (1) the condition was caused by the active negligence of the storekeeper or its employees; (2) the storekeeper or its employees actually knew about the condition; or (3) it was of such a character or had existed for a sufficient length of time that the storekeeper or its employees should have known about it. *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001). "Constructive notice may arise not only from the passage of time itself, but also from the type of condition involved, or from a combination of the two elements." *Banks*, 477 Mich at 983.

Plaintiffs first contend that defendant negligently created the puddle of water, which caused Oralia to fall in May of 2011. They posit that the only logical explanation is that defendant's employees where negligently stocking merchandise and somehow created the puddle. Plaintiffs focus on the pallets of merchandise in the area, stocking operations that were taking place generally, and the puddle's proximity to an "employee only" door.

However, neither Oralia nor Ricardo testified to seeing any employee involved in stocking operations when they arrived. Aaron Abernathy and Linda White, defendant's employees, likewise testified that they did not notice any employees in the area of Oralia's fall. Another Meijer employee, Calvin Heaven, testified that he was stocking near the area of the puddle, but only paper. Furthermore, even if stocking operations were occurring, plaintiffs have not clearly identified—let alone produced evidence of—the connection to the puddle of water. Although plaintiffs place great emphasis on stocking pallets near the puddle, they have failed to produce any evidence that such pallets were wet or somehow contributed to the puddle.

Thus, plaintiffs' argument rests on mere speculation and conjecture, as it is an explanation consistent with known facts. *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994). It appears equally likely that another customer, not defendant's employees, created the spill. Although plaintiffs' "evidence need not negate all other possible causes, [it] must exclude other reasonable hypotheses with a fair amount of certainty." *Ykimoff v Foote Mem Hosp*, 285 Mich App 80, 87; 776 NW2d 114 (2009). There is no basis to conclude that Meijer's employees, rather than another customer, created the puddle of water. Because "parties opposing a motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact[,]" plaintiffs' argument fails. *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). See also *Latham by Perry v Nat'l Car Rental Sys, Inc*, 239 Mich App 330, 342; 608 NW2d 66 (2000) ("There must be more than a mere possibility that unreasonable conduct of the defendant caused the injury.").

Plaintiffs alternatively contend that because defendant had a duty of inspection, it should have discovered the puddle. "When a premises possessor fails to inspect [its] property, or conducts an inadequate inspection, the law will impute knowledge of the dangerous condition to the premises possessor if the dangerous condition is of such a character or has existed for a sufficient time that a reasonable premises possessor would have discovered it." *Grandberry-Lovette v Garascia*, 303 Mich App 566, 575; 844 NW2d 178 (2014). Thus, a premises possessor cannot avoid liability by claiming ignorance when the exercise of reasonable care would have revealed the harm. *Id.*

Plaintiffs place great emphasis on the proximity to the employee door, and that stocking operations were going on generally in the store.[1] However, plaintiffs concede that the puddle was clear, which is why Oralia did not see it before slipping. It is not reasonable to require a defendant to conduct exhaustive inspections over every square inch of its premises to search for virtually invisible hazards.[2]

Furthermore, there is no evidence that the puddle of water existed for a sufficient length of time so that Meijer or its employees should have known of its existence. In fact, Ricardo admitted that he did not know how long the water was on the floor or from where it came. None of the Meijer employees knew the origin of the water, nor did they testify about the length of time it existed. There is no evidence to support plaintiff's speculative claim that the water existed for a sufficient length of time so that Meijer or its employees should have known of its existence. *Libralter Plastics, Inc*, 199 Mich App at 486; MCR 2.116(G).

Plaintiffs have offered no evidence beyond the mere existence of the hazard. Accordingly, how and when the hazard came to be are matters of conjecture. Summary disposition is therefore appropriate.

II. CONCLUSION

The trial court properly granted summary disposition to defendant. We affirm.

/s/ Pat M. Donofrio
/s/ Michael J. Riordan
/s/ Michael F. Gadola

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[1] Employee Heaven testified that this was not the only employee door. This fact detracts from plaintiffs' assertion that a significant number of employees must have been in this area. Employee White also testified that there were not stocking operations going on in the area of Oralia's fall.

[2] Although plaintiffs rely heavily on *Grandberry-Lovette, supra*, that case involved loose bricks that the premises possessor knew had a tendency to deteriorate and become hazardous. The instant case is easily distinguishable, as the hazard here is significantly different. The puddle was virtually invisible, it appeared unexpectedly, and its origin is a mystery. We also disagree with plaintiffs that defendant failed to meet its burden under MCR 2.116(G), considering the evidence discussed above.